Supreme Court, U.S.
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No. 09-1350 MAY 3 - 2010

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In The

Supreme Court of the United States

CRISELL SEGUIN,

Petitioner,

v.

KEN A. CUCCINELLI, Attorney General
for the Commonwealth of Virginia, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

PETITION FOR WRIT OF CERTIORARI

CRISELL SEGUIN, pro se*
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

QUESTIONS PRESENTED

The underlying case deals primarily with the attempt of an employer to use the justice system to force an employee to arbitrate defamation claims against her will, but then, during appeal and mandamus, issues of constitutionality and judicial discretion arose.

1. Is mandamus an appropriate remedy when: 1) a state circuit court judge deprives a plaintiff, without writing an opinion, of a demanded jury trial and a stay (with material facts in dispute and no proven waiver), to determine the existence of a proposed arbitration contract, ignoring state and federal statutes, case law, and state supreme court rules, effectively usurping power from both Legislatures; and when 2) a state supreme court refused jurisdiction on appeal due to an arbitration order's interlocutory designation while refusing two requests for stay pending certiorari?

2. Is it gross neglect, thus a usurpation of power, for the Virginia Supreme Court to ignore a trial court's inaction regarding violations of Virginia Code § 8.01-271.1, after multiple notifications, where the statute includes: "the court . . . *SHALL* impose . . . an appropriate sanction . . . " (emphasis added), especially when both courts were fully aware of activity requiring action pursuant to this statute?

QUESTIONS PRESENTED – Continued

3. Is the manner, as described herein, regarding the implementation of several sections of Virginia Code § 17.1-600 through 629 that apply to the assessment of costs in Virginia Supreme Court proceedings unconstitutional, and are the statutes themselves unconstitutional?

4. Federal Public Policy favors arbitration and encourages all legal authorities to implement arbitration aggressively. As an apparent issue of first impression, is it a violation of that same Federal Public Policy for an employer to force acceptance of an arbitration proposal after unilaterally incorporating it into required company procedures?

LIST OF PARTIES

Petitioner:	Crisell Seguin, pro se Plaintiff and Appellant Below
Respondents:	Ken Cuccinelli, Esq., Attorney General, Commonwealth of Virginia Mandamus Respondent Below
Co-Respondent:	Robert F. McDonnell, Governor, Commonwealth of Virginia
Co-Respondent:	Northrop Grumman Systems Corporation, and John C. Gage Defendants and Appellees Below

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION:

5th Amendment

> " . . . nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

14th Amendment

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

UNITED STATES CODE:

9 U.S.C. § 16 appears at App. 13

9 U.S.C. § 16(a)(1)(A)

28 U.S.C. § 1651(a) (All Writs Act)

> "(a) The Supreme Court and all courts established by an Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

CONSTITUTION OF VIRGINIA:

Article 1 § 11

> "Due process of law . . . – That no person shall be deprived of his life, liberty, or property without due process of law; . . . "

VIRGINIA CODE:

§ 1-248 appears at pages 31 and 32

> "Supremacy of federal and state law. – The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the

Constitution and laws of the United States or of the Commonwealth."

OTHER:

American Rule

"A prevailing party generally cannot recover attorneys' fees from the losing party."

ATTORNEY GENERAL OPINIONS:

AG Op., 87-88 Va. 64

"Due process must be satisfied prior to the imposition of sanctions."

JURISDICTION

If it please the Court, jurisdiction is being invoked here pursuant to 28 U.S.C. § 1257(a) and 28 U.S.C. § 2403(b) in that this certiorari was initiated after final judgment in the highest court of a state – the Virginia Supreme Court. As an alternative, if neither of the above is acceptable, petitioner would pray that the Court invoke the All Writs Act, 28 U.S.C. § 1651(a) to obtain jurisdiction of the case.

STATEMENT OF THE CASE

The validity of a set of Virginia statutes is being drawn into question as being repugnant to the Constitutions and laws of Virginia and of the United States, and three highly impacting issues, having

national import, are humbly brought to this Court's attention.

This case was originally initiated by the filing of a defamation suit in Fairfax County Circuit Court, Virginia in May of 2007 involving the petitioner (Crisell Seguin) and co-respondent (her employer) Northrop Grumman Systems Corporation and John C. Gage, her manager regarding the petitioner's 2006 performance review. Soon thereafter, the employer filed motions to compel arbitration claiming that they had a contract with the petitioner to resolve all employment disputes through third party arbitration instead of in a court of law.

The respondent denies that there has ever existed a legitimate contract to arbitrate and that she never agreed (neither implicitly nor explicitly) with the employer's proposals to arbitrate any claims she may have.

At a hearing to resolve this dispute, the trial court judge utilized summary judgment, based upon pleadings filed and testimony of both counsel, to order the parties to arbitration. The respondent objected, having demanded jury trial, and initiated steps to appeal the decision to the Virginia Supreme Court (VSC) in early 2008.

More than a year later after significant pleadings and briefs had been filed, and oral presentations, the VSC denied the petitioner's appeal holding that it had no jurisdiction according to Commonwealth law

due to the interlocutory condition of the appealed order.

Thereupon, some months after, in the late spring of 2009, the respondent proceeded to file a petition for a writ of mandamus with the Supreme Court of Virginia against the trial court judge who made the order, asserting that he had no authority to perform summary judgment under the circumstances. An assistant attorney general was assigned by the Commonwealth to represent the judge.

After almost a year of various litigant filings, the VSC ruled that mandamus cannot lie where any other avenue of relief is available and that it was also not a substitute for an appeal. The respondent then timely appealed to this Court.

REASONS FOR GRANTING THE PETITION

The petitioner apologizes for presenting multiple questions (4), but they all have national importance and tend to show how impacting the influence of arbitration has become in this country.

I will address each question separately with a short introduction to each:

1. **Is mandamus an appropriate remedy when: 1) a state circuit court judge deprives a plaintiff, without writing an opinion, of a demanded jury trial and a stay (with material facts in dispute and no proven waiver), to determine the existence of a proposed arbitration contract, ignoring state and federal statutes, case law, and state supreme court rules, effectively usurping power from both Legislatures; and when 2) a state supreme court refused jurisdiction on appeal due to an arbitration order's interlocutory designation while refusing two requests for stay pending certiorari?**

As more and more large corporations implement arbitration as their preferred procedure to resolve most employee disputes; the more those organizations complicate the lives of their employees, most of whom have never heard of the topic of arbitration before, unless it was associated with union disputes. This creates an overwhelmingly biased atmosphere in the workplace for employees who are unknowingly being thrust deeply into a quasi-judicial system without a choice since many, if not most, have probably never even had the occasion to speak to an attorney, nor have ever read a legal document at this point in their lives.

The average employee probably has inadequate training, no experience, and little or no knowledge regarding this very complicated issue. In many cases, the employee does not even know that he is being

forced to accept arbitration as a substitute for litigation since few of them probably consulted with a lawyer regarding the employment agreement they are required to sign. Many do not even have the time to read the complicated procedures the company dictates that they follow in their day-to-day work activities, until the arbitration issue is thrust upon them when they, or the company, attempt to resolve a disagreement. Then, WHAM, what a surprise most will have. Many employees simply are not aware of the quick sand that awaits them as one can see in my case. Many may not be able to even understand the explanations of their counsel and have to rely totally upon someone they do not really know that well. And sometimes, as in my case, their counsel withdraws, leaving them stranded.

This arbitration situation has now risen to a national level and recently has had the attention of the U.S. Congress in the form of the Franken Amendment, but that only helps defense sector employees. We need much more help from our Government in general to place this issue on a level playing field so that it can be more fair and less biased.

I hope through this action I can do my part to assist in that effort. No citizen of these United States should ever have to go through what I am experiencing. I have found no attorney (out of more than 100) who will challenge a county judge, a supreme court, an attorney general, and a state, so I am attempting to go it alone, on both my principles and the need for both equity and justice. I know I will

make mistakes along this path that I have chosen, but please forgive me. I will try my best and my intentions will be constructive.

I ask for the Court's consideration and leniency, relating to my lack of knowledge and experience in these matters, and my pro se status based upon *Haines v. Kerner,* 404 U.S. 519 (1972), which states " . . . the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers . . . ".

The employer has contended in other courts, and will likely ask this court to entertain the same theory of defense, that the employee engaged the arbitration process when she first objected to her manager's defaming statements, harassment and other adverse treatments, by her filing letter complaints about her boss's various behaviors.

In fact, as long as she has been an employee of this specific corporation (almost ten years, having received her twenty year reward recently for total service to, and including, taken-over companies) it has had a grievance process distinctly separate and apart from its arbitration activities. A process which is referred to as informal resolution and management review.

Specifically, that separate process treats complaints by management differently from other employee complaints, and has even explicitly declared management personnel exempt from arbitration. The employee's previous company was absorbed into her

present employer's company taking her along with it as a manager, and she continued being promoted as such until the defendant manager below succeeded by unjustified means to demote her.

In fact, she was improperly demoted from management by him on June 27, 2007 based upon the alleged defaming statements he supported in her 2006 review, which was after she filed her defamation complaint with a court of law. In actuality then, she was still exempt from arbitration at the time she filed her case due to her continual and contiguous management status for over ten years.

Throughout this case, the employer has concealed the fact, that as a manager, this employee was exempt from arbitration (App. 24). As can be seen, from the first formal implementation, managers were exempt.

Material facts have overtly been in dispute from the very beginning of this case. When the employee filed her complaint in a court of law instead of filing a demand for arbitration, she was in essence announcing that she did not feel there was a valid contract in place to arbitrate. (App. 15). This alone is the most material fact in dispute, outside of the issues related to defamation, but the employee also provided a list of other facts in dispute in the appendix of her mandamus petition.

In addition to filing her original case in a court of law instead of demanding arbitration, the employee filed a response in opposition to the employer's

motion to compel arbitration with the trial court, and simply by doing so, was confirming that she had not agreed to any contract to arbitrate regardless of its form or date, or how it was instigated.

The trial court judge who held the hearing regarding the motion to compel arbitration explicitly asked the parties if any material facts were in dispute. Both parties indicated on the transcribed record that material facts were in dispute (App. 28, P.7, L.5). To confirm the employer's position on this subject, there is no evidence in the record which shows that the employer ever contested its transcribed statements relating to material facts being in dispute, which in essence admits that there are such.

It is well established here that summary judgment was not appropriate.

The petitioner filed a Petition for Writ of Mandamus with the Virginia Supreme Court (VSC) on June 15, 2009 (App. 17) which was originally denied on October 21, 2009 (App. 1) after several defensive and other pleadings were filed. She then filed a timely Petition for Rehearing on November 2, 2009 (App. 17) which was eventually denied on February 1, 2010 (App. 9 and 17). Whereupon, the petitioner then timely filed her writ of certiorari with this Court on May 3, 2010.

The petitioner's primary reason for filing the petition for writ of mandamus included a request for the VSC to order the trial court to provide a jury trial regarding the existence of an arbitration contract

between her and her employer since material facts were in dispute (App. 28, P.7, L.5), a jury trial had been demanded in her original defamation suit filed on May 24, 2007, and no explicit jury trial waiver had been proven by the employer. A secondary request included a stay of the proceedings which her counsel had requested during the hearing but was sternly denied by the trial judge (App. 31, L.16).

After the employee filed her defamation complaint, the employer filed a motion on July 16, 2007 to compel arbitration followed up by memoranda in support thereof on October 9, 2007 (App. 33), and then filed corrected and enhanced memoranda in further support thereof on October 25, 2007. The trial judge then compelled the parties to arbitration (App. 7) at a hearing held on October 26, 2007.

A court's judgment in a mandamus action is in large part a matter of discretion with the court to which the petition is addressed in *Schlagenhauf v. Holder*, 379 U.S. 104, 112 n.8 (1964). A mandamus court must determine if the particular act complained of is mandated, justified, and whether it meets several other criteria. As Justice Black stated in concurrence: "Where there are extraordinary circumstances, mandamus may be used to review an interlocutory order which is by no means "final" and thus appealable under federal statutes."; *Will v. United States,* 389 U.S. 90 (1967), and further, " . . . the granting of mandamus may bring about the review of a case as would an appeal.".

This case justified mandamus below because it truly has a set of extraordinary circumstances in that several statutes, rules and cases have been ignored, as well as constitutional rights. A trial judge seems to have blatantly ignored state law, rules of the Virginia Supreme Court (VSC), and Virginia case law; all in refusing to allow the petitioner her day in court. And then the VSC seemingly ignored both federal law and cases which, if implemented, would have provided a full and proper appeal for the petitioner, according to federal law. Then the VSC seems to have ignored not only all of that, but inappropriate behavior by the defendant as well who concealed material evidence from both courts and submitted false evidence and false declarations to boot, all while filing truthful pleadings with a Federal District Court in Maryland five days earlier; *Nadine Batchelor v. Northrop Grumman*, WMN-07-1031 (App. 41). That case also contested whether a valid arbitration contract existed or not between an employee and the company.

This is just the kind of circumstance the mandamus is appropriate for, truly extraordinary: " . . . to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so."; *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943).

One of the criteria used to determine if mandamus is justified includes whether the law, as specified by either statute or rule (regardless as to whether by state or federal requirements) is either: 1) not being implemented properly, or 2) is being

ignored by the court complained of. If no violations are identified, then mandamus cannot lie. In the instant case, violations seem to abound.

Another major criteria for determining whether mandamus lies is whether the petitioner has any other recourse reasonably available which could be pursued as in *Kerr v. United States District Court*, 426 U.S. 394 (1976), which states: " . . . the party seeking this largely discretionary writ must show that there are no other adequate means to secure the desired relief.".

The VSC's unpublished order for her mandamus contained the opinion: "mandamus does not lie to compel a discretionary act and is not a substitute for appeal." (App. 1). I will address each topic separately.

"*Substitute for appeal*". The petitioner attempted an appeal prior to filing the mandamus (*Seguin v. Northrop Grumman Systems Corp., et al.*, 277 Va. 244, 247, 672 S.E.2d 877 (2009), but the VSC denied it due to jurisdictional (interlocutory) reasons. The petitioner then motioned for two separate, but consecutive, stays pending certiorari, but the VSC denied both of them as well. Petitioner's counsel then resigned before the appeal mandate issued primarily due to his lack of desire to file a rehearing, so the petitioner filed one herself, but to no avail. The petitioner searched far and wide for a replacement attorney without success. She did not feel qualified at the time to generate and sustain a post-VSC appeal,

losing that opportunity through no fault of her own. That was almost two years ago before the Petitioner gained her current level of knowledge which is allowing her to barely produce this certiorari. Even if an appeal had gone forward, it is doubtful that it would have been accepted because the federal courts would have to rule on a state decision, which they of course do not like to do. The only option would have been a certiorari like this one which she could not have handled. Therefore, she really had no viable appeal option, especially since Virginia does not support appeals of non-final orders.

In addition, when she asked the VSC in re-hearing to consider both applicable federal statutes (App. 13), and federal case law, the court chose not to do that as well. Near the end of the appeal, the VSC also denied two separate requests for stays pending certiorari leading the petitioner to believe that it would not support an appeal of any type, so the petitioner, discouraged, wrote and submitted the mandamus.

If a litigant uses the VSC logic (nothing to be done criteria) and Virginia law, the order would still be interlocutory because VAC § 8.01-581.16 (App. 12) does not support appeal without a stay, but 9 U.S.C. § 16(a)(1)(A) (App. 13) does, if a stay is refused. Again, the VSC could have awarded the missing stay and taken jurisdiction, but it did not probably due to its strict "finality" rule.

Contrary to the VSC, federal case law in *Green Tree Financial Corp.-Ala. v. Randolph,* 531 U.S. 79 (2000) supports appeal of an interlocutory order, and explains why the VSC logic of nothing to be done is not a roadblock to appeal.

Therefore, the petitioner respectfully disagrees with the VSC's approach in that it could have added the stay to the order (since the trial court judge denied one) and taken jurisdiction over the appeal, or at least such would have given sanction for me to proceed to another appeal level. Again, respectfully, they could have taken the same approach in the mandamus, as I had asked them to use federal law. but they chose not to do so there either.

In that vein, I believe that VAC § 8.01-581.16, which is part of Virginia's Arbitration Act (VAA) suite of statutes, violates federal law due to its deficiency of preventing an interlocutory order compelling arbitration without a stay, from qualifying for appeal. This apparent deficiency is not limited to just Virginia due to the influential and nationally accepted Uniform Arbitration Act's (UAA) guidelines and model statutes which do not, as of its last approved and published guidelines for states dated in 2000, support appeal of interlocutory orders. The UAA meets and publishes its guidance every ten years and may be scheduled to reconvene this year, at which point it may change that position. I personally believe that is why the VSC will not change.

"*Discretionary*". How can a discretionary act continue to be so if all required criteria become satisfied? In this case, if the trial judge had added the stay as requested at hearing, the employer could have appealed under VAC § 8.01.581.16(2) if it so desired. Otherwise, the employee's ability is at least inhibited, if not actually biased, in that, if she had gone to arbitration and obtained a ruling that no contract existed, she wasted that time and effort. Or, if when she came back, she could have requested a jury trial on the existence issue, she would have still wasted arbitration. Since mandamus is discretionary, then why not determine if a contract really exists in the first place and enhance the judicial process in doing so?

The petitioner respectfully believes that because the trial judge had the opportunity to potentially shorten the judicial cycle significantly through contract existence determination by jury trial early on, but chose not to, effectively ignoring applicable laws, and since he apparently ignored both state and federal rules of law and case guidance as well, by denying a stay, he abused his discretion beyond the reasonableness standard (apparent ignorance of multiple laws and multiple cases) and stepped into the realm of usurpation of legislative power, violating the separation of powers laws, doctrine and the constitutions of both Virginia and the United States. As this court said in *Bankers Life & Cas. Co. v.*

Holland, 346 U.S. 379 (1953), " . . . he exceeded his legal powers and this error ousted him of jurisdiction.". The court went on to say: "Congress must have realized that in the course of judicial decision some interlocutory orders might be erroneous. The supplementary review power conferred on the courts by Congress in the All Writs Act is meant to be used only in the exceptional case where there is clear abuse of discretion or "usurpation of judicial power" of the sort held to justify the writ in *De Beers Consolidated Mines v. United States,* 325 U.S. 212, 217 (1945)." Maybe this case is a good example.

The petitioner also believes that the VSC is not innocent in these dealings.

Therefore, there is a "clear and indisputable" right here to warrant mandamus, given these egregious refusals to obey the laws and refusals to exercise duty as in *In Re: Ralston Purina Co.*, 726 F.2d 1002 (4th Cir. 1984).

The petitioner attempted her best, through both appeal and mandamus, to convince the VSC to come to a proper conclusion, to no avail. She now truly understands what a daunting task the mandamus is. It is no wonder more than 100 attorneys turned the opportunity down. It has now taken three years just to get through the preliminaries in her long defamation battle.

2. Is it gross neglect, thus a usurpation of power, for the Virginia Supreme Court to ignore a trial court's inaction regarding violations of Virginia Code § 8.01-271.1, after multiple notifications, where the statute includes: "the court . . . *SHALL* impose . . . an appropriate sanction . . . " (emphasis added), especially when both courts were fully aware of activity requiring action pursuant to this statute?

This issue is particularly poignant when litigants bring ethics issues to judges who may then use technical details of the system to ignore, or inadequately address, the circumstance. When statutes and rules state that something "SHALL" be accomplished, there is no wiggle room. Such a dictate should not be ignored without consequence. The doctrine is well known and practiced, even in the civilian arena, and certainly in biblical terms. If nothing else, if other counsel see what some are able to circumscribe, they too may move closer to that disciplinary line. Eventually then, the system finds itself in array, sometimes experiencing dramatic effects to square itself again, and sometimes it is incapable of doing so which can seriously erode the public's confidence in our system of justice and its caretakers. That disarray is precisely what I would like to help prevent by raising this question. It is not that any one individual may have bad intentions, everyone makes mistakes and we all get too busy, but some do not wish to admit those mistakes. I do not know the exact motives of those who have misrepresented the facts and who

have misbehaved in this case, but they must be called upon to reconcile their transgressions and provide examples of the ability of the system to regulate itself without external intervention.

The employer filed four pleadings in October, 2007 in preparation for the October 26 hearing on their motion to compel arbitration. Two versions of the motion to compel and two versions of a motion to crave oyer. The second version of each document contained corrections which had been submitted in the first versions. It was learned after the hearing that they had not corrected all of their errors so the Petitioner wrote an ex parte letter to the trial court judge notifying him of this fact.

The trial court judge did nothing for almost two months so the petitioner, pro se at that time, contacted the employer's hearing attorneys to determine if they were going to correct the rest of their errors, one of which was a declaration by an employer's HR manager (App. 49) testifying that the petitioner had received certain documents at her home which constituted the proposed arbitration contract, which in fact the petitioner did not receive and has provided the employer with an affidavit to that effect. The employer's attorneys indicated that they were not going to make any more corrections since we were by that time on appeal to the VSC. Then shortly thereafter on January 21, 2008, the trial court wrote a letter to both parties (App. 23) indicating that he had not read the information which the petitioner had provided to him regarding the pleadings in error.

The record on appeal was transmitted on January 24, 2008 by the clerk of the county where the hearing had occurred. That record contained two large manila envelopes which contained the petitioner's ex parte communications to the trial court; one of the envelopes was sealed by the court. This was verified by the petitioner personally by reviewing the record on appeal in the VSC clerk's office. At a later date, it was apparent that someone at the VSC had broken the seal and opened both envelopes indicating that the evidence inside had been seen by VSC personnel.

At that point, the petitioner had obtained an appeal attorney who proceeded to file the required pleadings. The petitioner in the meantime tried every way that she could to get her employer to listen to her regarding the false evidence made by the employer's attorneys and false declarations made by the HR employee. The petitioner wrote formal ethics reports, informal complaints and even notified the Virginia State Bar regarding the attorneys filing pleadings in the lower court containing false evidence and false declarations. She even contacted the private attorney of the Chief Justice of the Virginia Supreme Court at one point. All to no avail.

Finally, she decided to write to the president and CEO and its chief operating officer of her employer to notify them that company attorneys were about to intentionally file false pleadings with the VSC. The very next filing contained an admission to the VSC that errors were present (App. 46).

Without the ability to publish company internal copies of the actual proposed arbitration contract because they were also corporate procedures, the petitioner began looking to find other employer legal cases around the country so as to find a public copy she could show as evidence of the employer's false pleadings. She found one in Baltimore County, Maryland. She then presented this material to her appeal attorney who would not submit it to the VSC.

By this time, the appeal had almost completely run its course in that the VSC's opinion had just been published and the petitioner asked her appeal attorney if he would file a request for rehearing. When he refused, she filed one herself, pro se. Apparently, the VSC ignored the corroborating evidence and notice of false pleadings both at appeal and below, because they denied her rehearing request ending the VSC appeal taking no action.

The petitioner diligently and exhaustively looked for three months for an attorney who would help her, without success. She talked to over 100 attorney's, or their offices, in multiple surrounding states and D.C. Unable to find an attorney who would help her, she decided to file a petition for a writ of mandamus with the VSC in hopes that it would provide the attention and exposure that the trial court's order to compel arbitration needed to expose these perpetrations. The VSC turned down all of the petitioner's various attempts to obtain relief. Whereupon, the petitioner now requests relief from this revered body.

Samples of one of the most significant errors in the employer's pleadings is a page number on the first page of the proposed arbitration contract (App. 39) submitted to the trial court, and of course, promulgated up through to the VSC in the appeal record.

During the mandamus, the petitioner attempted several ways to bring these issues to the attention of the VSC, including a motion for rule to show cause in an attempt to convince the trial judge to admit his knowledge of the subject (App. 2), as well as a motion to disqualify his counsel (App. 2). Obviously, if the trial judge did not know of the errors pre-mandamus, the petitioner informed him completely in her filings within that forum.

One might reasonably ask, what's the problem? Since the employer has put forth a copy of its proposed arbitration contract backed up by a sworn declaration (in, at least, four separate documents), in its very first pleadings to the trial court almost three years ago, essentially everything they have done or said since has no probative value and should be disregarded completely allowing the petitioner to proceed to trial as she has demanded.

Specifically, with a page number on the first page of "1 of 31" (App. 39), but with the employer only submitting 14 pages in the section numbering "2 of 14" through "14 of 14", there is a serious issue regarding what content may be missing. Even after their admission of errors in their opposition on appeal pleading footnote (App. 46), they have never corrected,

nor even attempted to correct, the associated declaration. Even to this day, that declaration is still false. They should never have submitted such seriously erred documents in the first place, but even so, after the many notifications they should have corrected them. It is not known why they still will not correct them today. I can only speculate that 5th Amendment rights may be involved.

In an effort to come to the truth of the matter, and prove that the submission of the errored pleadings may have been either intentional, or submitted through gross neglect, in opposition to their explanation of "computer error" in their footnote, the petitioner used the newest version of the employer's proposal (March 2010) in an attempt to duplicate the 1 of 31 page error. After many, many tries she was able to replicate the error. She has proved that it was an operator error, NOT a computer error as they describe in their VSC pleading (App. 46). It has to do with the way the operator sets up their computer display screen within the word processor when they print the procedure. Apparently, either the employer personnel who supplied the document to the attorneys committed the operator error, or the attorney's own personnel created the operator error. The "machine" DID NOT make the error, a human did. Did they know this when they published their admission and intentionally described it as a computer error instead of human error?

In March and early April of the current year, 2010, the petitioner went looking for a public version

of the 2006 proposed contract. This time she found what she needed in a Federal District Case in Baltimore City (App. 41) showing "page 1 of 14". Surprisingly, the filings in that court occurred five days before the same proposed arbitration contract was submitted to the subject trial judge in this case in October 2007. Even more surprising, to the point of astonishment, was that the SAME attorney, James J. Kelley, is listed as the lead attorney in both cases (App. 36, 42). How could he possibly not have known what he submitted in two different courts within five days of each other?

I motioned the VSC for a rule to show cause during the mandamus just for the reasons which have now been proven beyond a reasonable doubt that sanctionable activity has occurred. Specifically, the employer's attorneys submitted false evidence and false declarations multiple times without attempting to correct them. I am asking this court to rule whether Virginia Code § 8.01-271.1 should have been used to sanction the employer's attorneys, by both the trial court judge and the VSC.

The referenced statute states in part:

> *Virginia Code § 8.01-271.1. Signing of pleadings, motions, and other paper; oral motions; sanction. – Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record . . .*

> *The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is* ***well grounded in fact*** *and is* ***warranted by existing law or a good faith argument*** *for the extension, modification, or reversal of existing law, (iii)* ***it is not interposed for any improper purpose****, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . .*
>
> *If a pleading, motion, or other paper is signed or made in violation of this rule,* ***the court, upon motion or upon its own initiative, shall impose*** *upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred . . . including a reasonable attorney's fee.* (emphasis added).

This statute requires that the "court . . . SHALL impose . . . sanction". It is clear both the trial court and VSC were fully aware of the false evidence and false declarations, and that the order was based upon this false evidence, especially after the VSC was notified by the trial court judge and after the rule to show cause.

It is clear that the Virginia Legislature created this powerful legal tool to allow courts to discipline misbehaved litigants, in addition to other purposes. It

did not say "at the discretion of the court", it said SHALL if a violation occurs, the only discretion allowed is the type and amount of punishment, and that it should fit the transgressions. The court is even allowed to criminalize the punishment if it so desires, depending upon whether the sanction is dependent upon some action to occur, or simply a fixed punishment.

It is clear that the employer's attorneys signed their pleadings and submitted them. They were responsible for the content and they did not make the corrections necessary to rectify their errors. This created an aggravated circumstance.

3. Is the manner, as described herein, regarding the implementation of several sections of Virginia Code § 17.1-600 through 629 that apply to the assessment of costs in Virginia Supreme Court proceedings unconstitutional, and are some of the statutes themselves unconstitutional?

One of the most surprising events in my ordeal so far has been the severe disappointment I felt when the Virginia Supreme Court assessed me $50 unexpectedly, without notice or recourse. I was simply stunned and numb, literally for days. I did not know what I had done wrong and they would not tell me. Eventually, a deputy clerk attempted to express some of the reasons for their action in a letter by sharing with me two state statutes which he implements at the Court's order. How is it that a clerk has to explain

the actions of such a revered and noble body? My thoughts were that it must either be mundane or such a small detail that the issue did not rise to the level of using their efforts to assist or to help me. The more I read the applicable statutes, the more I felt like I had been singled out for punishment, like a child, unable to understand, thus preventing corrective action and increasing the risk of repeating whatever the mistake was. So far, I have been deprived of understanding by the Court's silence on the subject. I asked multiple times in multiple ways without response. How can a citizen become a better citizen if one does not know, and worse, cannot find out, the parameters which dictate performance? This leads to speculation and arbitrary actions, neither of which is acceptable in a legal setting. Facts must prevail and actions must be consistent. Coupled with these issues is the ambiguous circumstance created when one statute says one thing and another counters the first without explanation or instructions for implementation; in addition to being nebulous regarding which one takes precedence. This also is untenable, especially when coupled with what appears to be discrimination of application, again without explanation. Due to the importance I associate with receiving such discipline, I dedicated many hours to reviewing mandates attempting to understand. What I found, again, was truly surprising. There appears to be no published rationale related to the differences in applying the statutes between cases. The assessment amount is simply listed on the mandate, and that amount varies by

some undeterminable formula. Not that there may be a reasonable or rational explanation, but one cannot be discerned from the results of the Court's actions listed on its mandates in this regard. This could likely affect many courts of various levels and types across the country. Any Legislature which statutorily modifies the American Rule must do so fairly and dictate openness in application in order to maximize the public's welfare and confidence.

When the VSC dismissed the petitioner's mandamus on October 21, 2009 (App. 1) it ordered that "respondent . . . recover of the petitioner his costs by him expended about his defense herein", and further it stated on the face of the order "Respondent's costs: . . . Attorney's fee $50.00". I believe the assessment of that fee is contrary to law and is unconstitutional as implemented.

After receiving the order and after speaking with a deputy in the VSC clerk's office, I decided that it would be best to pay the fee with objections (including with it my feelings of duress) and then address the issue at a later time. My understanding was that if I did not pay the assessment that I might be subject to additional charges, including contempt. Unable to obtain advice from any counsel, I took the VSC's advice in *Robertson v. Commonwealth*, 181 Va. 520, 25 S.E.2d 352 (1943), which states: "The proper method of challenging the correctness of an adverse ruling is by an appeal and not by disobedience."; accord *Brougham v. Oceanic Steam Navigation Co.*, C.C.A.

2,205 F. 857, and *Oddo v. Saibin*, 106 N.J. Eq. 453, 153 A. 289.

I obeyed the Court's order by paying the assessment and then filed a document with the VSC entitled; *Petitioner's Notice of Assessment Payment with Objections* dated December 2, 2009. I then received a letter from the Court's deputy clerk (App. 21) informing me that the clerk's office was holding my objections document for two weeks to give me time to think about it, instead of filing it immediately as my cover letter to the clerk had asked.

The clerk's letter contained, among other information, two statutes which the clerk indicated that they use to carry out the VSC's cost assessment orders, indicating that the assessment was a "tax" not a "sanction".

Just prior to filing the notice of payment document, I had called the Office of the Attorney General (AG) of Virginia, as the clerk of the court suggested that I do, to determine who to make the check to and where to send it. The response I received was to make the trial judge the payee, but send it to the AG. Then I received a letter (App. 19) from the assistant AG who was the attorney of record for the trial judge in the mandamus action. He informed me that the Commonwealth was the proper payee and returned my check payable to the trial judge in his letter. I wrote a new check to the Commonwealth of Virginia (App. 20), and as can be seen, the AG designated the check to be deposited to the "Treasurer of Virginia/

Office of the Attorney General", which I assume is a Commonwealth general revenue account. I then wrote and filed my *Petitioner's Motion for Reconsideration of Assessment* on December 12, 2009 to the VSC which was more detailed than the objection document and contained a reference to the previous *Payment Notice* described above. The motion contained several topics including challenges to the VSC's assessment in relation to both Virginia and federal law, and expressed what I believed to be unconstitutional issues associated with the VSC's assessment and process.

The issue I am the most concerned with is my due process rights. I did not have an opportunity to explain myself or confront my accuser before the cost was applied. Not having been noticed also prevented me from confronting my accuser as in *Bloom v. Illinois,* 391 U.S. 94 (1968) stating that: "This Court has heretofore held that various provisions of the Bill of Rights such as . . . the right to counsel and to confrontation under the Sixth Amendment . . . ". I was not notified of the law being applied, and if the assessment is truly a "tax" I was not afforded the proper rights normally associated with taxation.

How can a single amount ($50.00) as stated by VAC § 17.1-624 (App. 11) be appropriate for all litigants? Shouldn't a tax be proportionate and based upon something of value? I was not aware that the VSC was designated a taxing authority as described in *Marshall v. Northern Va. Transp. Authority,* 275 Va. 419, 657 S.E.2d 71 (2008).

As the chart shows (App. 51), most cases have been charged only $30, and I found many others that were not mandamus who were charged that amount also, such as *Urdu Times, Inc. v. Hameedi,* 01 Va. S. Ct. UNP 011067 (2001).

I did not even know whether I had the right to object to the cost or not, but I shared my concerns with the VSC anyway feeling that I had a basic right to respond, with due respect. I felt like the cost was a sanction and that the AG's opinion (OP., 87-88 Va. AG64) was apropos, that due process should have been served similar to the contempt statute VAC § 8.01-271.1.

Most importantly though, was the taking of property by the state without due process. The $50.00 was part of my property before I had to relinquish it under duress. I believe this violates VAC § 1-248, which states: "The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth." I also feel that this action and assessment violates my 5th and 14th Amendment rights of the U.S. Constitution, as well as the equal protection clause. I have learned that the 7th Amendment does not apply to states, so I will not invoke that right to trial here.

I have utilized both Virginia and federal references. There are likely to be several probable conflicts identifiable between Commonwealth and U.S. law regarding this issue. Based upon VAC § 1-248 and *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), which states: " . . . state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law", and in *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142-143 (1963), where that state law stands as an obstacle to the accomplishment of the full purposes and objective of Congress, *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941)." If there exists a conflict, or if one develops, then federal law takes precedence, as for example; where the 14th Amendment overrides inherent power to summarily punish."

I believe the approach used to assess these costs upon me were akin to summary punishment. In *Sacher v. United States*, 343 U.S. 1 (1952), this Court defined summary punishment as: "Summary does not mean time, it means shorten process", in addition this Court said: "Summary punishment always, and rightly, is regarded with disfavor . . . ".

The VSC has explained its position as to just who should be assessed with this cost several times in the last century, including *Ficklen v. City of Danville,* 146 Va. 426, 131 S.E. 689 (1926) that: "Section 3528 (17.1-604 predecessor) of the Code of 1919 provides in mandatory terms that, in every case in an appellate court, costs shall be recovered by the ***party substantially***

prevailing." (explanation and emphasis added). This descriptive term is nebulous, in that, it can mean something different to one person than it does to another, and even worse, one person may legitimately change their definition from one circumstance to another and still be within the broad definition of the term.

This causes confusion and legitimate differing opinions. For instance, even though this term is sometimes meant to encapsulate a theory regarding success on the merits, one may not necessarily prevail on every issue raised. More confusing are the issues of how many justices voted in the case, how many dissented, and who actually decides success in the appeals courts.

The VSC continued in *Ficklen*, supra, by saying; "Section 3528 of the Code of Virginia provides in mandatory terms that . . . ". This re-enforces VAC § 17.1-604 and states the prevalent position this particular statute takes compared to the other statutes in the section, since none of the exceptions or modifications in the other statutes are discussed.

The 4th Federal Circuit has recently provided in *In Re: Cresent City Estates*, ___ F.3d ___ 082367 (4th Cir. 2009); "In other words, if Congress wishes to overcome either premise underlying the American Rule, it must express its intent to do so clearly and directly." And further it has said: "And '[I]n order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the

common law.", accord *United States v. Texas*, 507 U.S. 529, 534 (1993). And finally: "Because fee-shifting statutes are 'in derogation of the common law,' courts are obligated to construe them strictly", accord *Rowe v. U.S. Fid. & Guar. Co.*, 375 F.2d 215, 219 (4th Cir. 1967).

If construed strictly, the exact meaning of these statutes, when combined, is neither clear nor direct, since they contradict each other. This also causes ambiguity and promotes abuse of discretion in their application as can be seen in the chart I prepared (App. 51) to exemplify my contentions. As can be seen by the ?, 0, $30, and $50 in the amount assessed column, these laws do not seem to have been applied consistently, especially when comparing the difference in amounts between the cases, which I believe is discriminatory, unlawful and an abuse of discretion to the point of usurpation of the Virginia General Assembly's powers. Such an application is also repugnant to both laws and constitutions of the Commonwealth and U.S. and is unconscionable since "no reasonable person in their right mind would devise such an unfair scheme, nor apply it in this way".

As such, this violates the separation of powers doctrine and Article I, § 11 of the Virginia Constitution, in that one branch of government may not perform functions of another branch of government at the same time. By utilizing conflicting law, and by applying that law in an unexplained manner, the VSC appears to encroach upon the Legislature, given

the situation represented by the data in the chart, and how the VSC handled my costs.

I also take exception to the seemingly discriminatory act of exempting the Commonwealth from assessment as in VAC § 17.1-629 (App. 12), which the chart depicts clearly occurs. Since the monies assessed seem to be deposited to a general revenue account of the attorney general, it looks like this process could be described as more of a revenue generating option rather than a remedial measure since the $50 is not representative of what a reasonable person would expect attorney's fees to be. There is no reasonable correlation between the benefit conferred and the cost exacted as in *Fairfax County Water Authority v. City of Falls Church,* 19 Cir. L200816114 (2010).

Reasonable persons may legitimately disagree, but in this circumstance, there can be no reasonable disagreement that either the laws themselves, and/or the application of those laws creates confusion, discrimination, lack of clarity, uncertainty as to objective, lack of fairness as to implementation, and causes unconscionability and repugnancy, and may constitute egregious, unequal treatment under the law.

Therefore, at least VAC § 17.1-600 (App. 10) (due to "penal; discretion"), VAC § 17.1-604 (App. 10) (due to "party substantially prevailing"), VAC § 17.1-609 (App. 10) (due to "court may give or refuse costs, at its discretion", and VAC § 17.1-629 (App. 12) (due to "Commonwealth; exception") statutes would seem to be constitutionally null and void.

Last, but not least, is the issue of mootness. I believe that since the trial court judge made an order based upon false pleadings, and he grossly violated several laws, his order was invalid. Consequently, it was moot when it was presented to the VSC for mandamus, and therefore, exempt from the assessment of fees since there would have been no prevailing party at that point had it been declared moot.

4. Federal Public Policy favors arbitration and encourages all legal authorities to implement arbitration aggressively. As an apparent issue of first impression, is it a violation of that same Federal Public Policy for an employer to force acceptance of an arbitration proposal after unilaterally incorporating it into required company procedures?

My employer unilaterally implemented its forced arbitration program in 2002 by creating and adding new company procedures to the plethora of other employee requirements. Even though I was a manager at the time, both years before and years after this implementation, and exempt from the procedure, I was not fully cognizant of the program since I had never needed to understand it until 2007 when a disagreement with my manager occurred.

I had been aware of some of the company communications regarding the procedures, but they never rose to the level which required me to be knowledgeable, nor were they specifically brought to

my attention by any person, prior to filing. The procedure was also put forward to employees with a cover memo from the Corporate HR Director (App. 37) which explained several details of its application, but seems to have conveniently left out several important details which might alert or alarm some employees if they had that information.

There was no formal training (and still is none) provided and no specific knowledge was expected of employees regarding the program (even its existence) with the exception of an annual certification that each employee must sign indicating that they had conformed to all company practices, procedures and policies during the year and would promptly report any ethics or other violations appropriately.

Embedded within the annual certification is a statement which requires the employee to answer "YES" or the system would not report that compliance had occurred. For the last three years since filing my defamation complaint, I have not signed the certification mainly due to the arbitration requirement being embedded. For not doing so, I am under great pressure from the company to sign the certification and accept the arbitration procedure as a contract, and there is an atmosphere of harassment and the implied threat of termination if I do not comply.

I truly believe that the reason I have not been terminated before now is that I have maintained this legal action which might reflect adversely as retaliation if I were to be let go during the interim.

This situation should be illegal in a country which promotes itself as a strong supporter of basic and advanced human rights. It is simply atrocious and must be addressed and I believe that my actions are a good start to rectifying the situation if not at least make it prominently known to all citizens who are employees throughout the country.

Employees should not be forced to arbitrate against their will nor be under threat that termination will occur otherwise. This is truly a national problem. Virtually all government contractors, and many others, use similar or the same techniques because neither the courts nor Congress has stepped up yet to stop it.

Specifically, is it against the Federal Public Policy favoring arbitration to go so far as to adversely influence, force or even coerce employees, in any way, to accept company procedures which would otherwise be (and rightfully should be) a stand-alone agreement independent from all other company procedures?

CONCLUSION

As the evidence above clearly shows, summary judgment by the trial judge was totally inappropriate under the circumstances of this case. It has also been shown that several actions taken by the Virginia Supreme Court should be critically reviewed.

I pray that this Court declare VAC § 8.01-581.16 inconsistent with federal law and that until the Virginia Legislature takes steps to bring it into compliance, Virginia courts should use applicable Federal Laws.

I pray that this Court order both the VSC and the trial court to appropriately interpret applicable rules and laws and provide a trial to determine the existence of a contract.

I pray that this Court strike all of the employer's false pleadings filed to-date and that the employer be prevented from taking any adverse action against me again in any way.

I pray that this Court reinstate my employment status to the position it was prior to the 2006 false performance review and order immediate restitution of any and all lost pay and other benefits.

I pray that this Court order that appropriate sanction hearings be held and those found to be perpetrators be properly punished.

I pray that this Court order that all my fees and costs be repaid to me.

I pray that this Court declare VAC § 17.1-600 *et seq.* unconstitutional and that until those laws are properly repaired by the Virginia Legislature that any that would have caused assessment be held at bay until the costs laws are properly amended.

I pray this Court provide any other relief it deems appropriate.

Respectfully submitted,

CRISELL SEGUIN, pro se*
15015 Kamputa Dr.
Centreville, Va. 20120-1450
(703) 851-6174
**Petitioner*

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 21st *day of* October, 2009.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for a Writ of Mandamus

On consideration of this case, the Court is of the opinion that mandamus does not lie to compel a discretionary act and is not a substitute for appeal. It is therefore ordered that the said petition be dismissed, the rule be discharged and that respondent Dennis J. Smith, Judge, recover of the petitioner his costs by him expended about his defense herein.

Upon further consideration whereof, the "motion to intervene and leave to file their motion to dismiss" filed by co-respondents Northrop Grumman Systems Corporation and John C. Gage, is denied.

Respondent's costs:

Attorney's fee $50.00

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Ebby Edwards
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 29th *day of* January, 2010.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for a Writ of Mandamus

Upon consideration of the pleadings filed herein, the Court denies petitioner's "motion for reconsideration of assessment and notice of assessment payment with objections," "motion to disqualify respondent's counsel and to apply sanctions," and "motion for a rule to show cause."

A Copy,

Teste:

/s/ Patricia L. Harrington, Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday *the* 10th *day of* December, 2009.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for Rehearing

On November 24, 2009 came the petitioner, in proper person, and filed a motion to supplement her petition for rehearing in this case.

Upon consideration whereof, the Court grants the motion and the supplement is considered filed.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Douglas B. Robelen
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 17th *day of* July, 2009.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for a Writ of Mandamus

On June 15, 2009 came the petitioner, in proper person, and filed a pleading entitled "leave to file a consolidated cross-motion to strike respondent's and co-respondent's motions to dismiss." On June 19, 2009 came again the petitioner and filed a pleading entitled "leave to file an error correction to a consolidated cross-motion to strike respondent's and co-respondent's motions to dismiss." Thereafter, on June 22, 2009, came respondent Judge Dennis J. Smith, by the Attorney General of Virginia, and filed his response to the petitioner's June 15, 2009 pleading. On June 25, 2009, came again the petitioner and filed a pleading seeking leave to reply to the respondent's June 22, 2009 pleading.

Upon consideration whereof, the Court denies the relief requested by the petitioner in the above-referenced pleadings.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Douglas B. Robelen
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 22nd *day of* May, 2009.

Crisell Seguin, Appellant,

against Record No. 080217
Circuit Court No. CL-2007-0005843

Northrop Grumman Systems Corporation, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

For reasons stated in writing and filed with the record, the Court is of opinion that the order that compelled the parties to arbitrate their dispute in this case was not an appealable order and, therefore, this Court does not have jurisdiction to review the merits of appellant's contentions. Accordingly, the appeal is dismissed without prejudice.

This order shall be certified to the said circuit court.

A Copy,

Teste:

/s/ Patricia L. Harrington
Clerk

VIRGINIA:

IN THE CIRCUIT COURT
FOR FAIRFAX COUNTY

CRISELL SEGUIN,	)	
Plaintiff,	)	
	)	
v.	)	
	)	**CL-2007-5843**
NORTHROP GRUMMAN SYSTEMS CORPORATION, ET AL.,	)	
	)	
Defendants.	)	

ORDER

This matter having come on pursuant to defendants' motion to compel arbitration, and

The Court having heard argument and reviewed the memoranda of law submitted by the parties,

IT IS HEREBY ORDERED that defendants' motion to compel arbitration is ~~DENIED~~. [GRANTED /s/ DJS]

10/26/07 /s/ Dennis J. Smith
Date Circuit Court Judge

~~I ASK FOR THIS:~~
[SEEN AND
EXCEPTED TO
for reasons stated
in the Court and in
Memoranda of law
/s/ JLG]

/s/ Jack L. Gould
Jack L. Gould, Esquire
Counsel for Plaintiff
[VSB – 17521]

~~SIGN AND~~ _____
[I Ask For This:
/s/ KEG]

/s/ Karen E. Gray
James J. Kelley, Esquire
Karen E. Gray, Esquire
Counsel for Defendants
[VSB – 47747]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday *the* 1st *day of* February, 2010.

In Re: Crisell Seguin, Petitioner

Record No. 090981

Upon a Petition for Rehearing

On consideration of the petition of the petitioner to set aside the judgment rendered herein on the 21st day of October, 2009 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Lesley K. David
Deputy Clerk

Code of Virginia

§ 17.1-600. Laws of costs not penal; discretion of courts of equity.

The laws of costs shall not be interpreted as penal laws; nor shall anything in this chapter take away or abridge the discretion of a court of equity over the subject of costs, except as provided in § 17.1-604.

(Code 1950, § 14-174; 1964, c. 386, § 14.1-177; 1998, c. 872.)

---

§ 17.1-604. Costs in appellate courts.

In every case in the Supreme Court or the Court of Appeals, costs shall be recovered in such court by the party substantially prevailing.

(Code 1950, § 14-178; 1964, c. 386, § 14.1-181; 1971, Ex. Sess., c. 156; 1988, c. 525; 1998, c. 872.)

---

§ 17.1-609. Costs on certain motions and interlocutory orders.

Upon any motion, other than for a judgment for money, or upon any interlocutory order or proceeding, the court may give or refuse costs, at its discretion, unless otherwise provided. It may, when a demurrer is sustained to a plea in abatement, give judgment for the plaintiff for his full costs, to the time of sustaining it, an attorney's fee only excepted; and when any other part of the pleading is adjudged insufficient,

order all costs occasioned by such insufficient pleading to be paid by him who committed the fault.

(Code 1950, § 14-184; 1964, c. 386, § 14.1-187; 1998, c. 872.)

---

§ 17.1-624. Who to tax costs; what included for attorney's fee.

The clerk of the court wherein any party recovers costs shall tax the same. He shall include therein for the fee of such party's attorney, if he has one:

1. In a case of the Commonwealth, if no higher fee is allowed ..... $ 5.00
2. In a chancery cause other than a motion, when the matter in controversy exceeds $100 in amount or value ..... $ 15.00
3. In the Court of Appeals ..... $ 50.00
4. In the Supreme Court ..... $ 50.00

In no case shall more than one fee be taxed against the same party, unless the court otherwise directs.

(Code 1950, § 14-193; 1952, c. 616; 1954, c. 99; 1964, c. 386, § 14.1-196; 1984, c. 703; 1998, c. 872.)

---

§ 17.1-628. Judgment or decree for costs on behalf of Commonwealth; costs to be paid into state treasury. – In a case wherein there is judgment or decree on behalf of the Commonwealth for costs, there shall be taxed in the costs the charge actually

incurred to give any notice, although it be more than fifty cents; and the fees of attorneys and other officers for services, and allowances for attendance, as if such fees and allowances were payable out of the state treasury. What is so taxed for fees of, or allowance to, any person, shall be paid by the sheriff or officer who may receive such costs into the state treasury. (Code 1950, § 14-196; 1964, c. 386, § 14.1-200; 1998, c. 872.)

---

§ 17.1-629. No judgment for costs against Commonwealth; exception. – In no case, civil or criminal, whether in a court of record or a court not of record, except when otherwise specially provided, shall there be a judgment for costs against the Commonwealth. (Code 1950, § 14-197; 1964, c. 386, § 14.1-201; 1998, c. 872.)

---

§ 8.01-581.016. Appeals. – An appeal may be taken from:

1. An order denying an application to compel arbitration made under § 8.01-581.02;

2. An order granting an application to stay arbitration made under subsection B of § 8.01-581.02;

3. An order confirming or denying an award;

4. An order modifying or correcting an award;

5. An order vacating an award without directing a rehearing; or

6. A judgment or decree entered pursuant to the provisions of this article.

The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (1986, c. 614.)

---

9 U.S.C. § 16 – Appeals

(a) An appeal may be taken from –

(1) an order –

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order –

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

(Added Pub. L. 100-702, title X, Sec. 1019(a), Nov. 19, 1988, 102 Stat. 4670, Sec. 15; renumbered Sec. 16, Pub. L. 101-650, title III, Sec. 325(a)(1), Dec. 1, 1990, 104 Stat, 5120.)

Virginia Courts Case Information
Supreme Court of Virginia
Appeals

Case Information

Case Number: 080217	**Case Type:** CIVIL
Appellant: SEGUIN, CRISELL	**Appellee:** NORTHROP GRUMMAN SYSTEMS CORP.
Second Appellant:	
Lower Court: FAIRFAX COUNTY	
Record Received: 01/24/08	

Petition for Appeal

Petition for Appeal Received: 01/28/08		
Brief in Opposition Received: 02/21/08	**Received:**	**Received:**
Reply Brief Received:		
Certificate of Appeal: 06/12/08		
CSA Oral Argument:		
Disposition Date: 06/12/08	**Disposition:** GRANTED	
Petition for Rehearing Received: 04/25/08		
Petition for Rehearing Date: 06/12/08	**Decision:** GRANTED	

Appeal

Opening Brief Received: 07/22/08		
Appendix Received: 07/22/08		
Appellee Brief Received: 08/20/08	**Received:**	**Received:**
Reply Brief Received: 09/02/08		
Amicus Curiae Received:	**Received:**	
Disposition Date: 02/27/09	**Disposition:** DISMISSED	
Notice of Rehearing Received: 03/06/09		
Petition for Rehearing Received: 03/24/09		
Petition for Rehearing Date: 04/24/09	**Decision:** REFUSED	
Order:	**Opinion:** PUBLISHED	**Pages:** 7

Virginia Courts Case Information
Supreme Court of Virginia
Original Jurisdiction

Case Information

Case Number: 090981	**Case Type:** MANDAMUS
Petitioner: SEGUIN, CRISELL	**Respondent:** IN RE:
Second Petitioner:	
Lower Court: MANDAMUS	
Record Received:	

Original Jurisdiction

Petition Received: 05/15/09	
Response Received: 06/03/09	
Show Cause:	
Disposition Date: 10/21/09	**Disposition:** REFUSED
Petition for Rehearing Received: 11/02/09	
Petition for Rehearing Date: 02/01/10	**Decision:** REFUSED

Original Jurisdiction Docketed

Opening Brief Received:		
Appendix Received:		
Respondent's Brief Received:		
Reply Brief Received:		
Amicus Curiae Received:	**Received:**	
Disposition Date:	**Disposition:**	
Notice of Rehearing Received:		
Petition for Rehearing Received:		
Petition for Rehearing Date:	**Decision:**	
Order:	**Opinion:**	**Pages:**

[SEAL]
COMMONWEALTH of VIRGINIA
Office of the Attorney General

William C. Mims
Attorney General
900 East Main Street
Richmond. Virginia 23219

December 14, 2009

Ms. Crisell Seguin
15015 Kamputa Drive
Centreville, VA 20120-1450

In Re: Crisell Seguin
Record No. 090981

Dear Ms. Seguin:

Thank you for your check in the amount of $50.00 in the referenced matter. The check is being returned because it should be made payable to the "Commonwealth of Virginia" rather than to "Dennis J. Smith, Judge." I have been told that in my absence you were informed to make the check payable to Judge Smith; however, that was incorrect. I apologize for any inconvenience this may cause you.

Should you have any questions, please contact me at 804-786-1586.

Very truly yours,

/s/ Stephen Hall
Stephen M. Hall
Assistant Attorney General

Enclosure

Amount: $50.00
Account: [redacted]
Bank Number:

Sequence Number: 6092849498
Capture Date: 12/28/2009
Check Number: 1725

1725

CRISELL SEGUIN 07-72
16015 KAMPUTA DR.
CENTREVILLE, VA 20120-1450

Date 12/16/09

88-1510 VA
1534

Pay to the order of Commonwealth of Virginia $ 50.00

Fifty and 00/00 Dollars

Bank of America

ACH R/T 051000017

VSC# 09098 Advantage Criselll Seguin

Respondent Attorney's Fe [redacted]

(FOR DEPOSIT ONLY)
Treasurer of Virginia
Office of the Attorney General
WACHOVIA 2001008053807

Bank of America, N.A.
Chantilly
14001 Metrotech Dr
Chantilly, VA 20151

BEST AVAILABLE COPY

[SEAL]
SUPREME COURT OF VIRGINIA
PATRICIA L. HARRINGTON, CLERK
SUPREME COURT BUILDING
100 NORTH 9TH STREET, 5TH FLOOR
RICHMOND, VIRGINIA 23219
(804) 786-2251 V/TDD
FAX: (804) 786-6249

DOUGLAS B. ROBELEN
CHIEF DEPUTY CLERK

December 4, 2009

Ms. Crisell Seguin
15015 Kamputa Drive
Centreville, VA 20120-1450

Re: In Re: Crisell Seguin
Record No. 090981

Dear Ms. Seguin:

This will acknowledge receipt of the "notice of assessment payment and objections" that you filed in connection with the above case. The $50 attorney's fee assessed was not a sanction, but rather a taxed cost. See Code §§ 17.1-604 and 17.1-624. After reviewing these statutes, please advise me whether you still wish to pursue your "objections" with the Court. If I have not heard from you by December 15, I will assume that you do wish the Court to consider your objections.

Please note that if the Court grants your pending petition for rehearing and vacates the dismissal order

that assessed the attorney's fee, then you will have paid the Attorney General unnecessarily.

Sincerely,

/s/ Douglas B. Robelen
Douglas B. Robelen
Chief Deputy Clerk

cc: Hon. Stephen M. Hall (via email)

[SEAL] NINETEENTH JUDICIAL
CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
703-246-2221 • Fax: 703-385-4432 • TDD: 703-352-4139

COUNTY OF FAIRFAX CITY OF FAIRFAX

[Names On Letterhead Omitted In Printing]

January 21, 2008

Ms. Crisell Seguin
15015 Kamputa Drive
Centreville, Virginia 20120

RE: *Seguin v. Northrop Grumman Sys. Corp., et al.*, CL007-5843

Dear Ms. Seguin:

I am in receipt of your correspondence regarding the Motion to Compel Arbitration in the above-referenced matter which was heard by me on October 26, 2007. This is an *ex parte* communication to the court and as such I did not read it and will disregard it. Please make all communications to the court through your attorney, Mr. Jack Gould. I am forwarding copies of your correspondence to both Mr. Gould and Ms. Gray, counsel for Northrop Grumman.

Very sincerely yours,

/s/ Dennis J. Smith
Dennis J. Smith

DJS/cjf

NORTHROP GRUMMAN	CO NO.
CORPORATE PROCEDURE	H103
Subject: DISPUTE RESOLUTION	PAGE 1 of 8
	DATE 29 March 2002
AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.	SUPERSEDES None
	REVISION New

Process Owner Director of Employee Relations

Purpose This procedure describes Northrop Grumman's dispute resolution process.

Exclusions The dispute resolution process is not available to:

- persons working less than 20 hours per week
- persons working in a temporary capacity
- employees represented by a bargaining unit
- members of management
- foreign nationals living outside of the U S.

Members of management, however, are entitled to an impartial internal, senior management review of issues affecting their employment

	status. Managers should contact the Human Resources department at their company element for assistance in resolving such issues.
General	Northrop Grumman's dispute resolution process provides nonmanagerial employees who have completed their probationary period with a means of recourse when they feel they have not been treated in accordance with company policy. Employees who have signed a Mutual Agreement to Arbitrate Claims are encouraged, but not required, to first try to resolve the issue using the internal dispute resolution procedure. An employee who feels they have not been treated accordingly should meet with their direct report manager immediately and attempt to solve any issue(s) informally before filing a formal complaint. If this attempt fails to resolve the issue(s), the employee should contact the Human Resources department at their company element for advice and assistance in processing a formal complaint to be submitted to the dispute resolution process.

* * *

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

CRISELL SEGUIN,	:	
Plaintiff,	:	
-vs-	:	CL NO. 2007-5843
NORTHROP GRUMMAN SYSTEMS CORP., ET AL,	:	
Defendants.	:	

Circuit Courtroom 5C
Fairfax County Courthouse
Fairfax, Virginia

Friday, October 26, 2007

The above-entitled matter came on to be heard before the HONORABLE DENNIS J. SMITH, Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 12:05 o'clock a:m.

APPEARANCES:

On Behalf of the Plaintiff:

JACK L. GOULD, ESQUIRE

On Behalf of the Defendant:

KAREN E. GRAY, ESQUIRE

* * *

[Page 6] to proceed under the dispute resolution process.

This was a few months before she actually filed her complaint. So by that point, there's no dispute that she knew about the DRP, that she continued her employment as of that date, thereby accepting the DRP.

Now, in her opposition, Ms. Seguin argues both that she did not accept the DRP, which I think we've just covered, and that there was insufficient consideration for the DRP.

That's taken care of by Virginia law, which says specifically that continued employment can constitute sufficient consideration for agreements, including a non-compete, and in this case it would include an arbitration agreement.

One issue that counsel did raise in the opposition that I want to take care of very quickly is a jurisdictional argument. The parties here, Defendants, are not disputing this Court's personal jurisdiction with regard to the motion to compel arbitration. In fact, we are trying to invoke the Courts jurisdiction to compel arbitration.

So it's not a jurisdictional issue here. We agree that should the Court deny the motion to compel, [Page 7] that it would probably be in this Court. But for all the reasons I've said, the reasons contained in the papers, the Court should grant the motion to compel arbitration and send this to another forum.

[Page 7, Line 5] THE COURT: Are any material facts in dispute as to whether the parties entered into a contract to arbitrate.

MS. GRAY: My understanding from the opposition is that she does dispute that there is a valid contract here, mostly because she says she did not accept the DRP.

THE COURT: Well, then why doesn't the Court retain the authority to determine if a contract and agreement to arbitrate has been reached?

MS. GRAY: The Court does retain that authority, Your Honor. The Court retains the –

THE COURT: So how am I, at this point, making that determination absent a hearing?

I mean, if there's material facts that are in dispute, we resolve that through a hearing, don't we?

MS. GRAY: There are no material facts that are in dispute that are sufficient that it would require a hearing. The Plaintiff agrees that she was aware of the [Page 8] DRP and aware of the DRP prior to filing her lawsuit. The only things she claims is that her silence with regard to that DRP does not constitute acceptance.

THE COURT: So you are saying there are no material facts in dispute, she admits that she knew of it before she filed a lawsuit, and therefore is subject to it.

MS. GRAY: Correct.

THE COURT: Let me hear from Mr. Gould on that.

MR. GOULD: On the specific question you asked, the key material fact in dispute is whether there was mutual assent to this modification to her contract of employment. So that's the key material fact in dispute.

THE COURT: But if she acknowledges that she knew of the arbitration agreement, that she continued to work afterward, isn't that enough to say this gets arbitrated?

MR. GOULD: No. No. I mean, well, first of all, continued employment – her continuing to work, which goes into the considerational argument, is not enough. That's not sufficient consideration. I disagree with counsel that under Virginia law that's sufficient –

[Page 9] THE COURT: Are you saying that if an employer says, "Look, we are changing the rules of how we do things around here, and you have employment at will here, and we are telling you this. If you want to continue to work, you can. But you are going to work subject to these rules," that her continuing to work isn't enough to establish that she comes within that policy of the company.

MR. GOULD: That's what I'm saying.

THE COURT: Give me a case that says that.

MR. GOULD: I'll give you a couple cases, and the first – let me address the Paramount Termite Control case that the defense relies on.

THE COURT: Give me a case that asserts your proposition.

MR. GOULD: All right. Dulaney Foods, which is cited in Paramount, and if you want the citation, let me look at Paramount.

THE COURT: I don't need the citation.

MR. GOULD: In Dulaney Foods, the situation was the employer wanted to sell his manufacturing company –

THE COURT: I do need the spelling, though.

* * *

[Page 18] "You're gone." They can tell her, "Accept this term or leave."

MR. GOULD: They didn't say that. They said –

THE COURT: Well, they specifically did. They said, "By your –

MR. GOULD: No.

THE COURT: – continued employment, you are accepting the terms."

MR. GOULD: That's different from saying, "Either accept it or leave."

THE COURT: It's the flip side of it.

MR. GOULD: It –

[Line 14] THE COURT: Mr. Gould, the motion is granted. The case is going to arbitration.

[Line 16] MR. GOULD: May I ask you, Judge – this will likely be appealed – may I ask for a stay pending the appeal and the conclusion of the appellate proceedings?

THE COURT: You come back after you appeal it and then we will see. But I'm not going to do it under the likelihood – I'm not staying anything on the likelihood of something happening.

MR. GOULD: So once we appeal, we can come [Page 19] back and get a stay if we need to?

THE COURT: You can ask for it.

MR. GOULD: Oh, I understand.

THE COURT: You can ask for it, but I'm not going to – I don't grant motions on the basis that something may happen in the future. When it happens, then I will hear the motion and make a determination, or any judge will hear the motion as to whether it should be stayed.

All right?

MR. GOULD: Thank you, Your Honor.

THE COURT: Thank you.

MS. GRAY: Thank you, Your Honor,

* * *

(Whereupon, at approximately 12:21 o'clock p.m., the hearing in the above-entitled matter was concluded.)

* * *

[Page 20] CERTIFICATE OF REPORTER

I, LISE M. WARMUTH, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

/s/ Lise M. Warmuth
LISE M. WARMUTH, CVR
Certified Verbatim Reporter

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

CRISELL SEGUIN, Plaintiff, v. NORTHROP GRUMMAN SYSTEMS CORPORATION, *et al.*, Defendants.	CL-2007-5843 **RESPONSIVE PLEADING**

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR DEMURRER OR, IN THE ALTERNATIVE, MOTION TO COMPEL ARBITRATION

(Filed 2007 Oct – 9 PM 4:15)

Defendants Northrop Grumman Systems Corporation ("Northrop Grumman" or "the Company") and John C. Gage (hereinafter "Defendants"), by and through their undersigned counsel, hereby file this responsive pleading consisting of a Demurrer or, in the Alternative, Motion to Compel Arbitration, to Plaintiff Crisell Seguin's ("Plaintiff") Complaint.

Plaintiff's claims are subject to resolution through mandatory binding arbitration, as set forth

in Northrop Grumman's Dispute Resolution Process ("DRP"), and are not properly brought before this Court. In the alternative, the defamation claims asserted by Plaintiff fail to state a claim on which relief may be granted. As such, Plaintiff's claims should be dismissed with prejudice.

I. Introduction

On a demurrer, the facts alleged in Plaintiff's pleading are accepted as true. *Thompson v. Skate America, Inc.*, 261 Va. 121, 124-25, 540 S.E.2d 123, 124 (2001). Plaintiff is a current employee of a Northrop Grumman subsidiary. Complaint ¶¶ 1, 6. This lawsuit arises out of Plaintiff's employment. Complaint ¶¶ 6-7. Plaintiff's employment is subject to Northrop Grumman's Dispute Resolution Process effective January 30, 2004 as amended and superseded on September 15, 2006.

* * *

Plaintiff asserts that the alleged defamatory statements were communicated to other Northrop Grumman officials, including the General Manager of the Division where Defendant Gage and Plaintiff worked and the Human Resources Group Vice-President. Complaint ¶ 28. Plaintiff has not, and cannot, allege that Defendant Gage communicated the statements with any individual who did not have an interest in the subject or to anyone outside of

Northrop Grumman. Complaint ¶ 23. As the alleged defamatory statements were made to persons of interest and remained within the corporate entity, they were qualifiedly privileged and no publication occurred.[2]

Accordingly, under Virginia law, because there was no alleged publication sufficient to support a cause of action for defamation and Defendants' statements were privileged, Plaintiffs' cause of action for defamation should be dismissed.

III. Conclusion

For the foregoing reasons, Defendants respectfully request that their Demurrer or, in the Alternative, Motion to Compel Arbitration be GRANTED, and Ms. Seguin's claims be DISMISSED WITH PREJUDICE.

---

[2] In addition, even if the allegations could be construed to state a claim for defamation *per se* the statements are privileged because they were made to a party who has a corresponding interest or duty. *Great Coastal Express v. Ellington*, 230 Va. 142, 146-47, 334 S.E.2d 846, 853 (1985).

Dated this 9th day of October, 2007.

Respectfully submitted,

/s/ Karen E. Gray

James J. Kelley (VA Bar No. 13869)
Karen E. Gray (VA Bar No. 47747)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000
(202) 739-3001 (Fax)
Attorneys for Defendants

* * *

TAB 1

Ian V. Ziskin
Corporate Vice President
Chief Human Resources
and Administrative Officer

NORTHROP GRUMMAN

Northrop Grumman Corporation
1840 Century Park East
Los Angeles, California
90067-2199
Telephone 310-201-3116
Fax 310-556-4519

September 29, 2006

Dear Fellow Employee:

A workforce built on openness, trust and communication is part of our values and is important to each of us. It is my goal to keep you informed of key initiatives and changes.

In February of 2004, the Company established a new Dispute Resolution Process. In doing so, the Company brought together best practices from our heritage companies to create a comprehensive problem-solving process for our employees. Our Dispute Resolution Process has three internal steps (the Informal Process, Administrative Officer Review, Management Appeals Committee) and two external steps (Mediation and Arbitration).

We have undertaken a review of our Dispute Resolution Process. The results of our efforts are found in two revised policies, Dispute Resolution Process (*CO No. H103*) and the Employee Mediation/Binding

Arbitration Program (*CO No. H103A*), copies of which are enclosed. These documents are also available at the Human Resources U& Administration website, along with a Summary of Updates to Dispute Resolution Process, at http://wdd2web.northgrum.com/chra/. Please take time to review both of them carefully.

Like the previous policy, the revised Dispute Resolution Process and the Employee Mediation/ Binding Arbitration Program apply to all employees of Northrop Grumman or any of its subsidiaries, except those employees represented by labor unions, or those employees not covered by U.S. laws. By accepting or continuing employment on or after November 1, 2006, such employees agree, as a condition of continued employment, to submit any covered claims to binding arbitration, instead of having these claims heard by a court or jury. The Company also agrees to submit any covered claims to binding arbitration, instead of having its claims be heard by a court or jury.

If you have any questions about dispute resolution, please direct them to your site Human Resources representative.

/s/ Ian Ziskin
Ian Ziskin
Corporate Vice President
Chief Human Resources and
Administrative Officer

*Recycled Paper

NORTHROP GRUMMAN **CORPORATE PROCEDURE** **Subject:** DISPUTE RESOLUTION PROCESS **AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.**	**CO NO.** H103 **PAGE** 1 of 31 **DATE** 15 September 2006 **SUPERSEDES** 30 January 2004 **REVISION** General

Overview

Process Owner Director of Employment and Workforce Relations

Purpose This procedure describes Northrop Grumman's Dispute Resolution Process.

Applicable To This Dispute Resolution Process covers all employees of Northrop Grumman, its subsidiaries, and its other affiliated entities, who are employed on or after 1 November 2006, except the following individuals:

- applicants not yet employed
- employees represented by a labor union
- employees not covered by U.S. law

In This Procedure

This procedure contains the following sections:

- Overview
- Covered Claims
- Time Limits for Filing Claims
- Informal Review
- Administrative Officer Review
- Management Appeals Committee
- Mediation/Arbitration – General Information
- Mediation
- Arbitration

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NADINE BATCHELOR, Plaintiff, v. Northrop Grumman, Defendant.	Civil Action No. WMN-07-1032

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant Northrop Grumman[1] ("Defendant") hereby submits this Memorandum of Points and Authorities in Support of its Motion to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) and Section 4 of the Federal Arbitration Act, 9 U.S.C. § 4, and moves the Court to dismiss the Complaint against Defendant brought by Nadine Batchelor ("Plaintiff" or "Ms. Batchelor") for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted.

Plaintiff's Complaint should be dismissed in its entirety because Plaintiff agreed at the commencement

[1] Plaintiff improperly named "Northrop Grumman" as Defendant in this case. The proper name of the corporate entity is Northrop Grumman Systems Corporation.

of her employment with Northrop Grumman to mediate/arbitrate any and all claims against Northrop Grumman instead of filing a lawsuit. In her complaint, Plaintiff alleges discrimination and retaliation on the basis of her race, sex, and disability. These claims are within the scope of the parties' arbitration agreement. Plaintiff has not asserted any other claims

* * *

should not be permitted to proceed with her VII or ADA claims. Accordingly, Plaintiff's claims should be dismissed in their entirety.

III. CONCLUSION

For the foregoing reasons, Defendant Northrop Grumman respectfully requests that this Court dismiss Plaintiff's claims against Defendant in their entirety.

Dated: October 4, 2007

/s/

James J. Kelley (Bar No. 06669)
Katherine J. Emig (Bar No. 16839)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202.739.3000
202.739.3001 (fax)

Counsel for Defendant
Northrop Grumman

* * *

Case 1:07-cv-01032-WMN Document 9-3
Filed 10/04/07 Page 2 of 15

EXHIBIT 2

NORTHROP GRUMMAN	CO NO.
CORPORATE PROCEDURE	H103
Subject: DISPUTE RESOLUTION PROCESS	PAGE 1 of 14
	DATE 15 September 2006
AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY. VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.	SUPERSEDES 30 January 2004
	REVISION General

Overview

Process Owner Director of Employment and Workforce Relations

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Applicable To This Dispute Resolution Process covers all employees of Northrop Grumman, its subsidiaries, and its other affiliated entities, who are employed on or after 1 November 2006, except the following individuals:

- applicants not yet employed
- employees represented by a labor union
- employees not covered by U.S. law

In This Procedure

This procedure contains the following sections:

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IN THE SUPREME COURT OF VIRGINIA

Case No. 080217

Crisell Seguin,

Appellant,

v.

Northrop Grumman Systems Corporation, et al.,

Appellees.

NORTHROP GRUMMAN SYSTEMS CORPORATION AND JOHN C. GAGE'S OPPOSITION TO CRISELL SEGUIN'S BRIEF ON APPEAL

James J. Kelley (VA Bar No. 13869)
Karen E. Gray (VA Bar No. 47747)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000
(202) 739-3001 (Fax)

Attorneys for Northrop Grumman Systems Corporation and John C. Gage

* * *

Statement of Facts

Ms. Seguin is, and at all relevant times has been, an at-will employee of a Northrop Grumman subsidiary located in Fairfax County, Virginia. (J.A. 1). Ms. Seguin's employment with Northrop Grumman is subject to Northrop Grumman's DRP effective January 30, 2004, as amended on September 15, 2006. (J.A. 56-57). Except in very limited circumstances not applicable here, the DRP requires both Northrop Grumman and its employees to resolve all employment-related disputes through mandatory binding arbitration. (J.A. 17).

Northrop Grumman mailed Ms. Seguin the DRP on September 29, 2006. (J.A. 123 and 129). Ms. Seguin also received notice of the DRP by electronic mail on February 9, 2004, May 10, 2004, and September 29, 2006. *Id.* (J.A. 127-30).[1] In addition, since its inception in 2004, the DRP has been available to all employees on Northrop Grumman's intranet website.

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[1] In particular, Ms. Seguin received a copy of Corporate Procedure H103 (Dispute Resolution Process) and Corporate Procedure H103A (Employee Mediation/Binding Arbitration Program). Northrop Grumman does not contend that Ms. Seguin received a copy of the forms (C-604, C-605, C-606, and C-607) that are referenced in H103 in the September 2006 mailing. The receipt of those forms, however, is not relevant to the parties' arguments on appeal. Northrop Grumman also notes that the first page of H103 submitted to the lower court contained a pagination error on page 1, which occurred when the document was converted from electronic to hardcopy format. (J.A. 18). "Page 1 of 31" should have read "Page 1 of 14." Again, this pagination error is not relevant to the parties' arguments on appeal.

(J.A. 177). Ms. Seguin admits that she was aware of the DRP prior to filing her lawsuit in 2007. (J.A. 104).

* * *

arbitration.[12] (J.A. 18-31). The DRP also, on several occasions, specifically informs employees that they should refer to Corporate Procedure H103A, Employee Mediation/Binding Arbitration Program, for more specific information on the arbitration process. (J.A. 20, 22, 23, 29, 31). For Ms. Seguin to now argue that the DRP is separate and distinct from the binding arbitration agreement is at best illogical, and at worst disingenuous. Ms. Seguin has no right, after the fact, to pick and choose which specific provisions of the DRP apply to her and which do not. *See Hightower*, 272 F.3d at 243 (stating employee cannot decide he would rather pursue claims in court after invoking the terms of the DRP).

Conclusion

Ms. Seguin seeks appellate review of the trial court's order compelling arbitration. This Court does not have jurisdiction to review the trial court's order under Virginia law. Moreover, even if this Court did have jurisdiction to review the order, which it does not, Ms. Seguin's assignments of error present

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[12] Corporate Procedure H103A, Employee Mediation/Binding Arbitration Program, "sets out the process and requirements for mediation and binding arbitration as referenced in *CO No. H103*, Dispute Resolution Process." (J.A. 32).

insufficient grounds upon which to grant her Appeal. Ms. Seguin's Appeal to this Court should be denied.

Dated this 18th day of August, 2008

Respectfully submitted,

/s/ Karen E. Gray

James J. Kelley (VA Bar No. 13869)
Karen E. Gray (VA Bar No. 47747)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000
(202) 739-3001 (Fax)
Attorneys for Northrop Grumman Systems Corporation and John C. Gage

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TAB 2

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

CRISELL SEGUIN, Plaintiff, v. NORTHROP GRUMMAN SYSTEMS CORPORATION, *et al.*, Defendants.	CL-2007-5843

DECLARATION OF PATRICIA WOLF

I, Patricia Wolf, having personal knowledge of the facts set forth below, do hereby declare:

1. I hold the position of Director of Compliance and Employee Relations at Northrop Grumman Information Technology ("Northrop Grumman" or "the Company") and have held this position since January, 2002.

2. Northrop Grumman Corporation's Dispute Resolution Process ("DRP") was distributed to all Company employees via electronic mail on February 9, 2004, and again on May 10, 2004.

3. The DRP was amended on September 15, 2006. On September 29, 2006, the amended version

was distributed to Crisell Seguin and all other Company employees via electronic mail and first class U.S. mail. At all times while it has been in effect, it has also been posted on the Northrop Grumman intranet website.

4. Tab 1 of Defendants' Memorandum of Points and Authorities in Support of Their Demurrer, or in the Alternative, Motion to Compel Arbitration contains a true and correct copy of the documents relating to the DRP that were distributed to Ms. Seguin via electronic and first class U.S. mail on September 29, 2006, consisting of Corporate Procedure No. H103 (Dispute Resolution Process), Corporate Procedure H103A (Employee Mediation/Binding Arbitration Program), and a cover memorandum from Ian Ziskin, Chief Human Resources and Administrative Officer.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 9, 2007 /s/ Patricia A. Wolf
Patricia Wolf

Profile of 31 VSC Cases Relating to Writs of Mandamus over the last 12 years Extracted from CaseFinder (tm)

Rec.No.	Amt. Assessed	FOIA	Parties	Sub.Prev.Pty.	Pre	Citation and Parties
080282			Com-Com	Respondent		278 Va. 1 In Re: Commonwealth of Virginia 25 . . .
080946	0	InterLoc	Civ-Com	Respondent	w/o	277 Va. 293 Comcast v. Board of Supervisors 2 . . .
081000			Civ-City	Petitioner		277 Va. 250 Hale v. Board of Zoning Appeals o . . .
062688			Com-Com	Petitioner		276 Va. 127 Moreau v. Fuller 49 hits
062152	$50		Com-Civ	Petitioner		274 Va. 541 Umstattd v. Centex Homes 34 hits
060927	$30		Civ-City	Respondent		273 Va. 281 C. Givens Bros., L.L.C. v. Town of . . .
060554		Y	Civ-Com	Petitioner		273 Va. 326 Switzer v. Switzer 29 hits
052094	$30		Civ-Civ	Respondent	with	272 Va. 319 Barber v. VistaRMS, Inc. 76 hits
052333		Y	Civ-City	Petitioner		272 Va. 377 White Dog Publishing v. Culpeper . . .
051882		Y	Civ-Com	Petitioner		272 Va. 198 Bland v. Virginia State University 1 . . .
050212			Civ-Com	Petitioner		271 Va. 639 Ogunde v. Commonwealth 10 hits
060023			Com-Com	Petitioner		271 Va. 258 In re: Robert F. Horan 33 hits
050985			Com-Com	Petitioner		270 Va. 223 In Re: Gordon E. Hannett 54 hits
042240		Y	Civ-Com	Petitioner		270 Va. 58 Cartwright v. Commonwealth Trans . . .
041180			Civ-Com	Petitioner		269 Va. 546 Davenport v. Little-Bowser 22 hits
030723	?		Com-Civ	Petitioner		267 Va. 482 Beck v. Shelton 12 hits
021441			Com-Com	Respondent		265 Va. 313 In Re: Commonwealth's Attorney 3 . . .
020518	?		Civ-Com	Respondent		264 Va. 424 In Re: Hopeman Brothers, Inc. 20 . . .
012554	$50		Civ-Civ	Respondent		264 Va. 292 Titan America v. Riverton Investme . . .
011299	$30		Civ-City	Respondent		263 Va. 593 Ancient Art Tattoo Studio v. City of . . .
001947	$30		Civ-City	Respondent		262 Va. 364 Goldman v. Landsidle 38 hits
001729	$30	Y	Civ-Com	Respondent		262 Va. 154 Connell v. Kersey 28 hits
000337			Com-Civ	Respondent		261 Va. 113 Smith v. Richmond Newspapers, . . .
991282	?		Com-Civ	Petitioner		259 Va. 599 Hertz v. Times-World Corporation . . .
990030		Y	Civ-Com	Petitioner		258 Va. 598 Lawrence v. Jenkins 25 hits
981872	$30	Y	Civ-Com	Respondent		258 Va. 21 Moore v. Maroney 13 hits
981552			Com-Com	Respondent		257 Va. 365 Earley v. Landsidle 30 hits
980659	$30		Civ-Civ	Respondent		257 Va. 1 Pulliam v. Coastal Emergency Servic . . .
050597	$30		Civ-Com	Respondent		05 Va. S. Ct. UNP 050597 Witt v. Sinnen 7 hits
000633	?		Civ-Com	Respondent		00 Va. S. Ct. UNP 000633 In Re: The Virginian . . .
992827	$30		Civ-Com	Respondent		00 Va. S.Ct. UNP 992827 Watson v. Wiley 8 hit . . .

* Unaudited. Use at your own risk. The author is an unlicensed layman. All information and values are subject to interpretation, although a "best effort" was used.

090981	$50		Civ-Com	Respondent		In Re: Crisell Seguin

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 3rd *day of* November, 2000.

In Re: The Virginian-Pilot, Petitioner

Record No. 000633

Upon a Petition for Writ of Mandamus to compel action by the Circuit Court of the City of Portsmouth.

Upon consideration of the record, briefs, assignment of error, and argument of counsel, the Court is of opinion that the petition for writ of mandamus should be dismissed.

Invoking the original jurisdiction of this Court, the Virginian-Pilot filed a petition for a writ of mandamus to compel the Circuit Court for the City of Portsmouth to permit reproduction by photocopy or other means certain photographs that were introduced into evidence at the trial of Commonwealth v. Andre Stark, which ended in a mistrial. We have previously stated that "a litigant who seeks the issuance of a writ of mandamus must have no adequate remedy at law." Hertz v. Times-World Corp., 259 Va. 599, 608, 528 S.E.2d 458, 463 (2000). As in Hertz, the Virginian-Pilot's remedy at law is to file a petition to intervene in the underlying criminal case and pursue direct appeal of any adverse decision. "We have repeatedly held that the extraordinary remedy

of mandamus cannot be used as a substitute for appeal". Id. at 610, 528 S.E.2d at 464, See also Morrissette v. McGinniss, 246 Va. 378, 382, 436 S.E.2d 435 (1993); Richlands Medical Ass'n v. Commonwealth, 230 Va. 384, 387, 337 S.E.2d 737, 740 (1985).

Accordingly, the petition for writ of mandamus is denied.

JUSTICE KINSER, concurring.

Although I still adhere to the views expressed in the dissenting opinion in Hertz v. Times-World Corp., 259 Va. 599, 610-15, 528 S.E.2d 458, 464-67 (2000), I concur in the judgment in this case because of the principle of stare decisis. See Pulliam v. Coastal Emergency Servs. of Richmond, Inc., 257 Va. 1, 10, 509 S.E.2d 307, 312 (1999).

JUSTICE LACY, with whom JUSTICE KOONTZ and JUSTICE LEMONS join, dissenting.

I dissent for the reasons expressed in the dissenting opinion in Hertz v. Times-World Corp., 259 Va. 599, 610-15, 528 S.E.2d 458, 464-67 (2000).

A Copy,

Teste:

Clerk